

II. Nonstatutory Double Patenting Rejection

Claims 1-9, 13-19, and 29-59 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-85, 152, and 153 of U.S. Application No. 09/820,481. Office Action at pp. 2-3. Applicants thank the Examiner for clarifying the serial number. Office Action at p. 5.

Applicants respectfully disagree and traverse this rejection. Moreover, Applicants respectfully request that the rejection be held in abeyance until allowable subject matter is indicated in this application.

III. Rejection under 35 U.S.C. § 103

Claims 1-9, 13-19, and 29-59 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,235,298 ("*Naser*") in view of U.S. Patent No. 5,688,930 ("*Bertho*"). Office Action at pp. 4-5. Applicants respectfully traverse this rejection.

Two of the basic criteria an Examiner must demonstrate in order to establish a prima facie case of obviousness are (1) that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, and (2) that there is a reasonable expectation of success in making the proposed modification. See M.P.E.P. § 2143. Neither of these two criteria has been satisfied with respect to the modifications of *Naser* proposed by the Examiner.

The Examiner cites col. 18, lines 44-64 of *Naser*, for allegedly teaching xylose and arabinose. Office Action at p. 4. The Examiner concedes that *Naser* does not teach "the claimed pentoses," i.e., the at least one sugar as claimed. *Id.* Thus, *Bertho* is cited for disclosing an alkyl pentoside mixture, such mixtures being used, for example, as surfactants for hair care. Office Action at p. 5.

Applicants respectfully disagree with the Examiner's interpretation of *Naser*. *Naser* does not teach the use of xylose and arabinose. *Naser* only discloses polymers with monomers of xylose and arabinose, in the disclosure of anionic exudates polymers. See col. 18, lines 57-60. ("A preferred anionic exudates polysaccharide is gum tragacanth, a complex mixture of acidic polysaccharides containing ... xylose, and arabinose.") (added emphasis). Thus, *Naser* teaches the use of xylose and arabinose monomers in a polysaccharide or polymer and not the use of xylose and arabinose, as alleged by the Examiner.

Moreover, Applicants respectfully submit that the combination of *Naser* and *Bertho* is improper, as the references do not suggest combined teachings. In the passage cited by the Examiner (col. 18, lines 44-64), *Naser* is teaching the use of zwitterionic and amphoteric surfactants. See *also* heading at col. 16, line 59. In one embodiment, *Naser* teaches that:

In systems where the external surfactant W2 is comprised entirely of or contains a majority (50% or higher) of amphoteric surfactant, an anionic gum polymer is preferred. These can be seaweed polysaccharides, exudate polysaccharides, or microbial polysaccharides.

Col. 18, lines 44-46.

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While *Naser* teaches the use of zwitterionic and amphoteric surfactants, the choice of the particular surfactant being "critical" (see Abstract in *Naser*), *Bertho* in contrast teaches:

These mixtures of alkyl pentosides make remarkable non-ionic surface active agents.

Col. 6, lines 14-15 (added emphasis). One of ordinary skill in the art would not modify *Naser's* compositions by replacing the zwitterionic or amphoteric surfactants (a "critical" choice) with *Bertho's* non-ionic surfactant. Non-ionic surfactants encompass a completely different class of surfactants from zwitterionic or amphoteric surfactants. Thus, if anything, *Naser* and *Bertho* teach away from each other with regard to the particular surfactant used.

Accordingly, there is no motivation to combine the references and no expectation of success. For at least the foregoing reasons, Applicants respectfully request the withdrawal of this rejection.

IV. Information Disclosure Statement

Applicants submit a new Information Disclosure Statement, in which the individual items from the previously disclosed search results (items #18 and #19) are disclosed separately.

Accordingly, Applicants respectfully request consideration of each item in the Information Disclosure Statement submitted herewith.

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V. Conclusion

Applicants respectfully request the reconsideration and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: March 24, 2003

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